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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

JAN 07 2005

GARY M. BLAIR, Executive Officer
By *Carrie L. Wagner*
CARRIE L. WAGNER, Deputy Clerk

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiffs,

vs.

MICHAEL JOSEPH JACKSON,

Defendant.

) Case No. 1133603

)
) MOTION FOR AN ORDER THAT THE
) HEARING ON THE DISTRICT
) ATTORNEY'S MOTION FOR ADMISSION
) OF ALLEGED PRIOR OFFENSES (Evid.
) Code Sections 1108, 1101(b)) AND ALL
) OTHER PRETRIAL HEARINGS ON THE
) ADMISSIBILITY OF EVIDENCE BE
) HEARD IN CHAMBERS

) ~~UNDER SEAL~~

) Honorable Rodney S. Melville
) Date: January 12, 2005
) Time: 8:30 a.m.
) Dept.: 8

MOTION FOR AN ORDER THAT THE HEARING ON THE DISTRICT ATTORNEY'S MOTION FOR ADMISSION OF ALLEGED PRIOR OFFENSES (Evid. Code Sections 1108, 1101(b)) AND ALL OTHER PRETRIAL HEARINGS ON THE ADMISSIBILITY OF EVIDENCE BE HEARD IN CHAMBERS

1 TO THE CLERK OF THE ABOVE ENTITLED COURT, AND TO THE DISTRICT
2 ATTORNEY OF THE COUNTY OF SANTA BARBARA, TOM SNEDDON, AND DEPUTY
3 DISTRICT ATTORNEYS GERALD FRANKLIN, RON ZONEN AND GORDON
4 AUCHINCLOSS, AND TO THE MEDIA AND THEIR REPRESENTATIVE, THEODORE
5 BOUTROUS:

6 Please take notice that the Defendant does hereby move and will further move on January
7 12, 2005 at 8:30 a.m., or as soon thereafter as counsel may be heard in Department 8 of the above
8 entitled court, for an order that the hearing on the District Attorney's motion for admission of
9 alleged prior offense, pursuant to Evidence Code Sections 1108 and 1101(b), and all other
10 pretrial hearings pertaining to the admissibility of evidence, be heard in chambers, and for such
11 other and further relief as the Court may deem just and proper. This request is based on the
12 overriding interests of Mr. Jackson's rights to due process and a fair trial under the Fifth, Sixth
13 and Fourteenth Amendments to the United States Constitution and Article 1, Sections 1, 7, and
14 15 of the California Constitution.

15 This motion is based on the grounds that disclosing the prosecution's alleged prior
16 offense evidence, as well as other evidence that the parties are seeking to admit, before the Court
17 has had a chance to rule on whether the evidence is admissible, would deprive Mr. Jackson of his
18 rights to due process and a fair trial by prejudicing the already summoned jury pool.

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28 MOTION FOR AN ORDER THAT THE HEARING ON THE DISTRICT ATTORNEY'S MOTION FOR
ADMISSION OF ALLEGED PRIOR OFFENSES (Evid. Code Sections 1108, 1101(b)) AND ALL OTHER
PRETRIAL HEARINGS ON THE ADMISSIBILITY OF EVIDENCE BE HEARD IN CHAMBERS

1 This motion is based on this Notice of Motion, and the Memorandum of Points and
2 Authorities attached hereto, the papers, records and files in this case and such other matters as
3 may be received by the Court at or after the hearing scheduled on this motion.

4 Dated: January 7, 2005


5 Respectfully submitted,

6 COLLINS, MESEREAU, REDDOCK & YU
7 Thomas A. Mesereau, Jr.
Susan C. Yu

8 SANGER & SWYSEN
9 Robert M. Sanger

10 OXMAN & JAROSCAK
Brian Oxman

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12 By:


13 Robert M. Sanger
14 Attorneys for Defendant
MICHAEL JOSEPH JACKSON

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28 MOTION FOR AN ORDER THAT THE HEARING ON THE DISTRICT ATTORNEY'S MOTION FOR
ADMISSION OF ALLEGED PRIOR OFFENSES (Evid. Code Sections 1109, 1101(b)) AND ALL OTHER
PRETRIAL HEARINGS ON THE ADMISSIBILITY OF EVIDENCE BE HEARD IN CHAMBERS

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 ARGUMENT

3 I.

4 THERE IS A SUBSTANTIAL PROBABILITY THAT OPEN ADMISSIBILITY
5 HEARINGS WOULD NOT ALLOW MR. JACKSON TO HAVE A FAIR TRIAL

6 The test for determining whether or not to close a criminal proceeding to the public is
7 whether there is a substantial probability that an open hearing would offset the right to a fair trial.
8 (*Press-Enterprise Co. v. Superior Court* (1986) 478 U.S. 1, 13.) Here, the prosecution is
9 seeking to introduce inflammatory, and unfounded, testimony regarding alleged prior sexual
10 offenses. The public disclosure of this evidence that may or may not be admissible would
11 deprive Mr. Jackson of his right to a fair trial by prejudicing the jury pool. Jury summonses have
12 already been sent out and the trial is less than four weeks away. The disclosure of such
13 prejudicial information on the eve of trial would violate Mr. Jackson's rights to due process and a
14 fair trial under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and
15 Article I, Sections 1, 7, and 15 of the California Constitution.

16 II.

17 THERE IS NO REMEDY OTHER THAN CONDUCTING ALL OR PART OF THE
18 EVIDENTIARY HEARINGS IN CHAMBERS THAT WILL PROTECT MR.
19 JACKSON'S RIGHT TO A FAIR TRIAL

20 The Court is required to explore remedies other than closure before the Court may close a
21 criminal proceeding to the public. (*Ortega v. Superior Court* (1982) 135 Cal.App. 3d 244.)
22 Here, closed hearings are necessary in order to prevent the dissemination of inadmissible and
23 inflammatory material to the jury pool. The media coverage of this case is unprecedented and it
24 is certain that anything said in open court will be broadcast to any of the already summoned
25 potential jurors who read the newspaper, watch television, listen to the radio or visit news or
26 entertainment websites. Anything short of at least partially closed hearings will result in highly

27
28 MOTION FOR AN ORDER THAT THE HEARING ON THE DISTRICT ATTORNEY'S MOTION FOR
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PRETRIAL HEARINGS ON THE ADMISSIBILITY OF EVIDENCE BE HEARD IN CHAMBERS

1 prejudicial material being broadcast to the already summoned jurors.

2 III.

3 CONCLUSION

4 For the above stated reasons, Mr. Jackson respectfully requests that this Court issue an
5 order that the hearing on the prosecutions alleged prior offenses motion, and all other hearings
6 regarding the admissibility of evidence. take place in chambers.

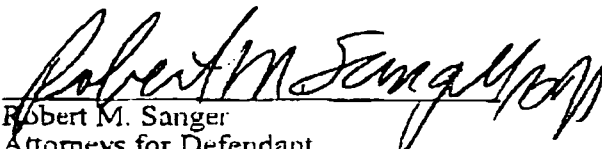
7 Dated: January 7, 2005

8 COLLINS, MESEREAU, REDDOCK & YU
Thomas A. Mesereau, Jr.
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9 SANGER & SWYSEN
Robert M. Sanger

10 OXMAN & JAROSCAK
11 Brian Oxman

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13 By:

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15 Robert M. Sanger
16 Attorneys for Defendant
17 MICHAEL JOSEPH JACKSON
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PROOF OF SERVICE

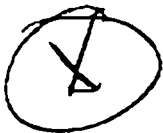
I, the undersigned declare:

I am over the age of 18 years and not a party to the within action. I am employed in the County of Santa Barbara. My business address is 233 East Carrillo Street, Suite C, Santa Barbara, California, 93101.

On January 7, 2005, I served the foregoing document MOTION FOR ORDER THAT THE HEARING ON THE DISTRICT ATTORNEY'S MOTION FOR ADMISSION OF ALLEGED PRIOR OFFENSES AND ALL OTHER PRETRIAL HEARINGS ON THE ADMISSIBILITY OF EVIDENCE BE HEARD IN CHAMBERS on the interested parties in this action by depositing a true copy thereof as follows:

SEE ATTACHED SERVICE LIST

BY U.S. MAIL - I am readily familiar with the firm's practice for collection of mail and processing of correspondence for mailing with the United States Postal Service. Such correspondence is deposited daily with the United States Postal Service in a sealed envelope with postage thereon fully prepaid and deposited during the ordinary course of business. Service made pursuant to this paragraph, upon motion of a party, shall be presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after the date of deposit. **FEDERAL EXPRESS**



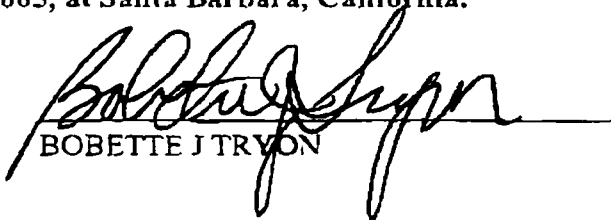
BY FACSIMILE - I caused the above-referenced document(s) to be transmitted via facsimile to the interested parties

BY HAND - I caused the document to be hand delivered to the interested parties at the address above. **TO THE SANTA BARBARA DISTRICT ATTORNEY ONLY**

STATE - I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

FEDERAL - I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed **JANUARY 7, 2005**, at Santa Barbara, California.


BOBETTE J TRYON

SERVICE LIST

District Attorney of the County of Santa Barbara

Tom Sneddon

Gerald Franklin

Ron Zonen

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